

1 THOMAS L. SANSONETTI  
Assistant Attorney General  
2 ROBERT D. MULLANEY  
Trial Attorney  
3 Environment and Natural Resources Division  
United States Department of Justice  
4 301 Howard Street, Suite 1050  
San Francisco, California 94105  
5 Telephone: (415) 744-6491

6 PAUL M. WARNER (Utah Bar No. 3389)  
United States Attorney  
7 JEANNETTE SWENT (Utah Bar No. 6043)  
Assistant United States Attorney  
8 District of Utah  
185 South State Street, Suite 400  
9 Salt Lake City, Utah 84111  
Telephone: (801) 524-5682

10 Attorneys for Plaintiff United States of America

11 LARRY W. LINDEEN  
12 Exxon Mobil Corporation  
800 Bell Street  
13 Houston, Texas 77002-7426  
Telephone: (713) 656-3429

14 Attorney for Defendant Mobil Exploration & Producing U.S. Inc.  
15

16 IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

17 UNITED STATES OF AMERICA, )  
18 )  
Plaintiff, )  
19 )  
v. )  
20 )  
MOBIL EXPLORATION & )  
21 PRODUCING U.S. INC., )  
22 Defendant. )  
23 \_\_\_\_\_ )

CIVIL ACTION NO.

CONSENT DECREE

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1 WHEREAS, concurrent with the Lodging of this Consent Decree, Plaintiff United States  
2 of America, on behalf of the United States Environmental Protection Agency ("EPA"), is filing a  
3 Complaint against Defendant Mobil Exploration & Producing U.S. Inc. (hereinafter referred to as  
4 "Mobil" or "Defendant"), alleging violations of the federal Clean Air Act, 42 U.S.C. §§ 7401-  
5 7671q (the "Act"), at Mobil's McElmo Creek Unit oil production facility and associated oil  
6 fields (the "Facility"), located near Aneth, Utah, on the Navajo Nation;

7 WHEREAS, Mobil, without filing any answer in this action, neither admits nor denies the  
8 violations alleged in the Complaint;

9 WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds,  
10 that this Consent Decree has been negotiated by the Parties in good faith and that this Consent  
11 Decree is fair, reasonable, and in the public interest;

12 NOW, THEREFORE, before taking any testimony, without the adjudication of any issue  
13 of fact or law, and upon the consent and agreement of the Parties to this Consent Decree, it is  
14 hereby ORDERED, ADJUDGED, AND DECREED as follows:

15 I. JURISDICTION AND PARTIES BOUND

16 1. This Court has jurisdiction over the subject matter of this action under Section  
17 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court also  
18 has personal jurisdiction over Defendant. Venue is proper in this judicial district under Section  
19 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391 and 1395, because it is the  
20 judicial district in which Mobil resides and in which the violations alleged in the Complaint have  
21 occurred and are occurring. Notice of the commencement of this action has been given to the  
22 Utah Department of Environmental Quality and the Navajo Nation Environmental Protection  
23 Agency in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b). Mobil consents to  
24 and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter, enforce,  
25 modify, or terminate this Consent Decree.

26 2. This Consent Decree shall apply to and be binding upon Mobil and its successors  
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1 and assigns, and upon the United States on behalf of EPA.

2 3. If Mobil transfers any ownership interest or right to operate the Facility, including,  
3 but not limited to, the sale, lease, or licensing of others to operate all or part of the Facility, Mobil  
4 shall give notice of this Consent Decree to any successor-in-interest prior to such transfer. Mobil  
5 shall send a copy of such written notification to EPA, at the address listed in Section XII  
6 (Notification) of this Consent Decree, concurrently with such sale or transfer. Upon sale or  
7 transfer of such Facility, Mobil shall attach a copy of this Consent Decree to the agreement by  
8 which such Facility is sold or transferred and shall make performance of the obligations of Mobil  
9 under this Consent Decree an obligation of any purchaser or transferee. For 180 days after sale  
10 or transfer of such Facility, Mobil and its successor in interest shall be jointly and severally liable  
11 for obligations under this Consent Decree. Thereafter, Mobil shall either retain or be relieved of  
12 its obligations under the Consent Decree as provided in Appendix A.

## 13 II. DEFINITIONS

14 4. Unless otherwise expressly provided herein, terms used in this Consent Decree  
15 shall have the meanings assigned to those terms in the Act, 42 U.S.C. §§ 7401-7671q, and the  
16 federal rules and regulations promulgated thereunder. Whenever terms listed below are used in  
17 this Consent Decree or any appendices or documents incorporated by reference hereto, the  
18 following definitions shall apply:

- 19 a. "Act" shall mean the Clean Air Act, as amended, 42 U.S.C. §§ 7401-  
20 7671q.
- 21 b. "C.F.R." shall mean the Code of Federal Regulations.
- 22 c. "CO" shall mean carbon monoxide.
- 23 d. "CO<sub>2</sub> Breakthrough" shall mean an event where a gas or fluid injected in  
24 the Facility's oil field for the purpose of promoting the production of oil contacts a producing  
25 well and results in an increase in gas volume to compressor station equipment.
- 26 e. "Consent Decree" or "Decree" shall mean this written agreement and all  
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1 exception that the quarterly report required by Paragraph 25 may be changed, at the discretion of  
2 the permitting authority, to a semiannual report; and (iii) that is no longer subject to any judicial  
3 review procedures.

4 p. "Final Title V Permit" shall mean a permit (i) that is issued in accordance  
5 with the provisions of 40 C.F.R. Parts 70 and 71, whichever is applicable; (ii) that includes, but  
6 is not limited to, federally-enforceable terms and conditions that are at least as stringent as all of  
7 the terms and conditions included in the Final PSD Permit; and (iii) that is no longer subject to  
8 any judicial review procedures.

9 q. "Flaring Incident" shall mean continuous or intermittent flaring at the  
10 Main Flare that occurs after the Effective Date of this Consent Decree and results in the  
11 emissions of SO<sub>2</sub> equal to, or greater than, five-hundred (500) pounds in any twenty-four (24)  
12 hour period; provided, however, that if five-hundred (500) pounds or more of SO<sub>2</sub> have been  
13 emitted in a twenty-four (24) hour period and the flaring continues into subsequent, contiguous,  
14 non-overlapping twenty-four (24) hour period(s), each period of which results in emissions equal  
15 to, or greater than, five-hundred (500) pounds of SO<sub>2</sub>, then only one Flaring Incident shall have  
16 occurred. Subsequent, contiguous, non-overlapping periods are measured from the initial  
17 commencement of flaring within the Flaring Incident.

18 r. "H<sub>2</sub>S" shall mean hydrogen sulfide.

19 s. "Lodging" or "Date of Lodging" shall mean the date on which Plaintiff  
20 lodges this Consent Decree with the United States District Court for the purpose of seeking  
21 public comment on the Consent Decree.

22 t. "Main Flare" shall mean the flare installed as part of the Facility's former  
23 gas processing plant.

24 u. "Main Flare Emissions" shall mean the emissions from the Main Flare at  
25 the Facility as well as all emissions that result from: (1) combustion of fuel gas in the Main  
26 Flare's pilot, (2) the closed drain and filter backwash operations, (3) CO<sub>2</sub> Breakthroughs, (4) any  
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1 Scheduled Maintenance, and (5) unscheduled maintenance of the Facility's compressors.

2 v. "Malfunction" shall mean any sudden and unavoidable breakdown of  
3 process or pollution control equipment. CO<sub>2</sub> Breakthroughs or Scheduled Maintenance of the  
4 Facility's compressors are not Malfunctions.

5 w. "NO<sub>x</sub>" shall mean oxides of nitrogen.

6 x. "Paragraph" shall mean a portion of this Consent Decree identified by an  
7 Arabic numeral or an upper or lower case letter. Any reference to a Paragraph designated by an  
8 Arabic numeral includes all subsequent Paragraphs designated by consecutive lower case letters.

9 y. "Parties" shall mean the United States and Mobil.

10 z. "Plaintiff" shall mean the United States.

11 aa. "PSD Permit" shall mean a construction permit issued in accordance with  
12 the provisions of 40 C.F.R. § 52.21.

13 bb. "Root Cause" shall mean the primary cause of a Flaring Incident as  
14 determined through a process of investigation; provided, however, that if a Flaring Incident  
15 encompasses multiple releases of SO<sub>2</sub>, the "Root Cause" may encompass multiple primary  
16 causes.

17 cc. "Scheduled Maintenance" shall mean work that is part of the routine work  
18 plan for the compressors located at the Facility's former gas processing plant. This work is  
19 typically planned and arranged on a set frequency, usually based on periods of time (e.g., daily,  
20 weekly or monthly) or on the operating hours of the equipment. Scheduled Maintenance shall  
21 not include work necessitated by the failure of a part of a compressor.

22 dd. "Section" shall mean a portion of this Consent Decree identified by an  
23 upper-case Roman numeral.

24 ee. "SEP" shall mean the supplemental environmental project required by this  
25 Consent Decree.

26 ff. "SO<sub>2</sub>" shall mean sulfur dioxide.  
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1 gg. "United States" shall mean the United States of America, acting on behalf  
2 of EPA.

3 hh. "VOC" shall mean volatile organic compounds as defined in 40 C.F.R.  
4 § 51.100(s).

### 5 III. OBJECTIVES

6 5. It is the express purpose of the Parties entering into this Consent Decree to further  
7 the objectives of the Act and to resolve the violations that the United States specifically alleged  
8 in the Complaint filed in this action. To further these objectives, Mobil agrees, inter alia, to pay  
9 the civil penalty as set forth in Section IV (Civil Penalty), to comply with the measures as set  
10 forth in Section V (Compliance Measures), and to perform the SEP as set forth in Section VI  
11 (Supplemental Environmental Project).

### 12 IV. CIVIL PENALTY

13 6. After the Effective Date and within ten (10) days of the receipt of the Electronic  
14 Fund Transfer procedures described in Paragraph 7 below, Mobil shall pay to the United States a  
15 civil penalty in the amount of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000),  
16 plus interest at 1.29 percent per year from the date of August 21, 2003, through the date of  
17 payment.

18 7. Payments under this Consent Decree shall be made by Electronic Funds Transfer  
19 ("EFT") to the United States Treasury according to current United States EFT procedures. The  
20 United States shall provide a copy of current EFT procedures to Mobil at the address listed in  
21 Section XII (Notification) of this Consent Decree. Concurrently with the electronic funds  
22 transfer, Mobil shall send, by facsimile, notice of payment to the person designated as "Point of  
23 Contact" on the EFT instructions, and shall send notice of payment to both EPA and DOJ at the  
24 addresses listed in Section XII (Notification). The notice of payment shall identify (i) the date  
25 and amount of money transferred; (ii) the name and address of the transferring bank; (iii) the civil  
26 action case name and case number; (iv) USAO File Number 2003V00248; (v) DOJ Case Number  
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90-5-2-1-2237; (vi) this Consent Decree (including Effective Date); and (vii) a description of the reason for payment (including the Paragraph number(s) of this Consent Decree that are most relevant to the payment).

8. The payment of the civil penalty specified in this Section shall not be deductible by Mobil or any other person or entity for federal taxation purposes.

#### V. COMPLIANCE MEASURES

##### 9. Emission Limits.

a. From the Effective Date of this Consent Decree through the effective date of the Final Title V Permit, Mobil's Main Flare Emissions shall not exceed the following rolling 365-day cumulative amounts (to be calculated each day): (i) 60 tons per year of SO<sub>2</sub>, (ii) 73 tons per year of CO, (iii) 13.4 tons per year of NO<sub>x</sub>, and (iv) 95.4 tons per year of VOC. Field Flares shall not be used to circumvent the emission limits of this Paragraph.

b. The provisions of Section VIII of this Consent Decree (Stipulated Penalties) shall apply for Mobil's failure to comply with any of the emission limits in Paragraph 9.a above. However, Mobil may assert, as an affirmative defense to a demand by the United States for stipulated penalties, that the alleged violation was due to a Malfunction. To qualify as a Malfunction, Mobil has the burden of proof of demonstrating that:

- (1) The emissions in question were not the result of any CO<sub>2</sub> Breakthroughs or any Scheduled Maintenance of the Facility's compressors;
- (2) The emissions in question were caused by a sudden, unavoidable breakdown of process or pollution control equipment, beyond the control of Mobil, its contractors, or any entity controlled by Mobil;
- (3) The emissions in question (i) did not stem from any activity or event that could have been foreseen and avoided, or planned for, and (ii) could not have been avoided by better operation and maintenance practices;
- (4) To the maximum extent practicable, the air pollution control equipment or



1 processes were maintained and operated in a manner consistent with good  
2 engineering practice for minimizing emissions;

- 3 (5) Repairs were made in an expeditious fashion when Defendant knew or  
4 should have known that SO<sub>2</sub> emissions resulting from the event would be  
5 equal to, or greater than, 500 pounds in a 24-hour period; (off-shift labor  
6 and overtime must have been utilized, to the extent practicable, to ensure  
7 that such repairs were made as expeditiously as practicable);
- 8 (6) The amount and duration of the emissions in question were minimized to  
9 the maximum extent practicable during periods of such emissions;
- 10 (7) All possible steps were taken to minimize the impact of the emissions in  
11 question on ambient air quality;
- 12 (8) All emission monitoring systems were kept in operation if at all possible;
- 13 (9) The actions of Mobil, its contractors, or any entity controlled by Mobil in  
14 response to the emissions in question were documented by properly  
15 signed, contemporaneous operating logs, or other relevant evidence;
- 16 (10) The emissions in question were not part of a recurring pattern indicative of  
17 inadequate design, operation, or maintenance. (Emissions associated with  
18 a Flaring Incident are presumed to be part of a recurring pattern indicative  
19 of inadequate design, operation, or maintenance if the Root Cause of the  
20 Flaring Incident is a recurrence of the same Root Cause that caused a  
21 previous Flaring Incident, unless EPA agrees that such previous Flaring  
22 Incident was the result of a Malfunction);
- 23 (11) If the emissions in question are associated with a Flaring Incident, Mobil  
24 complied with all of the applicable requirements of Paragraphs 12 and 13  
25 of this Consent Decree; and
- 26 (12) Mobil properly and promptly notified EPA as follows:
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- 1 (a) if the emissions in question are associated with a Flaring Incident,  
2 Mobil complied with the notification and reporting requirements of  
3 Paragraphs 12 and 25 of this Consent Decree;  
4 (b) if the emissions in question are not associated with a Flaring  
5 Incident, Mobil listed such emissions as attributable to a  
6 Malfunction in the quarterly report required by Paragraph 25 of this  
7 Consent Decree.

8 c. If SO<sub>2</sub> emissions exceed 1,000 pounds per day, Mobil may submit a  
9 written notification to EPA, claiming that the emissions resulted from a major Malfunction. In  
10 the written notification, Mobil shall submit information to show that the incident qualifies as a  
11 Malfunction pursuant to Paragraph 9.b.(1) - (10). EPA agrees to review promptly such written  
12 notification regarding a major Malfunction and to respond to the notification within 30 days after  
13 EPA receives the written notification.

14 10. Monitoring. In determining compliance with the emission limits referred to in  
15 Paragraph 9 above, from the Effective Date of this Consent Decree through the effective date of  
16 the Final Title V Permit, Mobil shall measure and record the H<sub>2</sub>S concentration in the field gas at  
17 the Facility in each calendar month at the inlet to the Facility's former gas processing plant where  
18 the Main Flare is located, and shall continuously measure and record the volume of gas  
19 combusted in the Main Flare. Each and every calendar day, Mobil shall calculate and record the  
20 daily emissions from the Main Flare based on the last recorded measurement of H<sub>2</sub>S  
21 concentration in the field gas at the Facility and that day's recorded volume of gas combusted in  
22 the Main Flare. If Mobil is unable to measure the volume of gas combusted in the Main Flare on  
23 any day, the volume of gas for that day shall be deemed to be equal to the daily average volume  
24 of gas combusted in the Main Flare based on the previous 12 months' emissions data. However,  
25 the use of this daily average as substitute data neither relieves nor excuses Mobil from complying  
26 with the sampling, data collection, and monitoring requirements of this Paragraph.

1           11.     Operation and Maintenance of Main Flare and Compressors. From the Effective  
2 Date, Mobil shall at all times and to the extent practicable, including during periods of startup,  
3 shutdown, Malfunction, CO<sub>2</sub> Breakthrough, Scheduled Maintenance, or unscheduled  
4 maintenance of the Facility's compressors, operate and maintain the compressor station  
5 equipment and Main Flare in a manner consistent with good air pollution control practices for  
6 minimizing emissions.

7           a.       As of the Effective Date, Mobil shall comply with the provisions of the  
8 Operations and Maintenance Plan ("O&M Plan") contained in Appendix B, which is hereby  
9 incorporated by reference into this Consent Decree. Mobil shall follow the procedures for the  
10 inspection of the Facility's compressors and associated equipment as set forth in the Life Cycle  
11 Maintenance Plan in Appendix B, and shall maintain inspection logs at the Facility documenting  
12 that these inspections have been conducted. Mobil shall maintain daily records at the Facility  
13 regarding operation of the Facility's compressors on a Daily Plant Reading Form. (An exemplar  
14 of such a Form is contained in Appendix B.) Mobil shall also maintain a supply of designated  
15 spare parts for the Facility's compressors and associated equipment that includes all of the  
16 equipment on the Spare Parts List contained in Appendix B. After using equipment on its Spare  
17 Parts List, Mobil shall replace such equipment as expeditiously as possible. Mobil shall place a  
18 purchase order for such equipment within 45 days after it is used. Mobil shall conduct training  
19 of Facility operators in accordance with the Training Program for Plant Operators contained in  
20 Appendix B, and shall maintain records documenting that the training has been conducted.  
21 Mobil shall retain copies of inspection logs and other records required by this Paragraph 11.a.  
22 until termination of this Consent Decree. Mobil's failure to comply with any requirement of the  
23 O&M Plan shall constitute a violation of this Consent Decree subject to stipulated penalties.

24           b.       Within three hundred sixty-five (365) days from the Effective Date, Mobil  
25 shall install an automatic air-assisted flare system on the Main Flare, pursuant to the provisions  
26 of 40 C.F.R. § 60.18(c)(5) and (f)(6). Thereafter, Mobil shall operate and maintain the Main  
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1 Flare in compliance with 40 C.F.R. § 60.18(c)(1), (c)(2), (c)(3)(ii), (c)(5), (d), (e), (f)(1) through  
2 (f)(4), and (f)(6).

3 c. Within three hundred ninety-five (395) days from the Effective Date,  
4 Mobil shall submit to EPA, at the address listed in Section XII (Notification), a certification that  
5 the Main Flare is equipped with an automatic air-assisted flare system and is in compliance with  
6 all applicable provisions of 40 C.F.R. § 60.18(c)(1), (c)(2), (c)(3)(ii), (c)(5), (d), (e), (f)(1)  
7 through (f)(4), and (f)(6).

8 12. Root Cause Analysis. No later than 72 hours after an event first qualifies as a  
9 Flaring Incident, Mobil shall notify by telephone, at (415) 947-8715, the Chief of the Air  
10 Enforcement Office, Air Division of EPA Region IX, of such Flaring Incident. Telephone  
11 notification shall be followed by a detailed written notification to EPA, at the address listed in  
12 Section XII (Notification) of this Consent Decree, made within seven (7) working days after the  
13 event first qualifies as a Flaring Incident. For a Flaring Incident caused by Scheduled  
14 Maintenance or a CO<sub>2</sub> Breakthrough, Mobil shall submit a report to EPA, at the address listed in  
15 Section XII (Notification), no later than sixty (60) days following the end of such a Flaring  
16 Incident, that sets forth the information required by Paragraph 12.a. through d. below. Except for  
17 those Flaring Incidents caused by Scheduled Maintenance or a CO<sub>2</sub> Breakthrough, Mobil shall  
18 conduct a Root Cause Analysis in accordance with the program described in Appendix C to  
19 evaluate the cause of each Flaring Incident and shall submit a report to EPA, at the address listed  
20 in Section XII (Notification), no later than sixty (60) days following the end of a Flaring Incident,  
21 that sets forth all of the following:

22 a. The date and time that the Flaring Incident started and ended. To the  
23 extent that the Flaring Incident involved multiple releases either within a twenty-four (24) hour  
24 period or within subsequent, contiguous, non-overlapping twenty-four (24) hour periods, Mobil  
25 shall set forth the starting and ending dates and times of each release;

26 b. An estimate of the quantity of SO<sub>2</sub> that was emitted and the calculations  
27 that were used to determine that quantity;

1 c. The steps, if any, that Mobil took to limit the duration and/or quantity of  
2 SO<sub>2</sub> emissions associated with the Flaring Incident;

3 d. Except for those Flaring Incidents caused by Scheduled Maintenance or a  
4 CO<sub>2</sub> Breakthrough, a detailed analysis that sets forth the Root Cause and all contributing causes  
5 of that Flaring Incident, to the extent determinable; however, if a Flaring Incident is caused by  
6 Scheduled Maintenance or CO<sub>2</sub> Breakthrough, then Mobil need only identify the Root Cause as  
7 Scheduled Maintenance or CO<sub>2</sub> Breakthrough (whichever is applicable), and either (i) describe  
8 the nature of the work done for Scheduled Maintenance or (ii) identify the specific wells that  
9 most likely experienced the CO<sub>2</sub> Breakthrough;

10 e. An analysis of the measures, including possible design, operational, and  
11 maintenance changes, that are available to reduce the likelihood of a recurrence of a Flaring  
12 Incident resulting from the same Root Cause or contributing causes in the future. If Mobil  
13 concludes that corrective action(s) is (are) required under Paragraph 13, the report shall include a  
14 description of the action(s) and, if not already completed, a schedule for its (their)  
15 implementation, including proposed commencement and completion dates. If Mobil concludes  
16 that corrective action is not required under Paragraph 13, the report shall explain the basis for  
17 that conclusion;

18 f. To the extent that investigations of the causes and/or possible corrective  
19 actions still are under way on the due date of the report, a statement of the anticipated date by  
20 which a follow-up report fully conforming to the requirements of Paragraph 12.d and 12.e will be  
21 submitted; provided, however, that if Mobil has not submitted a report or a series of reports  
22 containing the information required to be submitted under this Paragraph within forty-five (45)  
23 days (or such additional time as EPA may allow) after the due date for the initial report for the  
24 Flaring Incident, the stipulated penalty provisions of Section VIII of this Consent Decree shall  
25 apply, but Mobil shall retain the right to dispute, under Section XI (Dispute Resolution) of this  
26 Consent Decree, any demand for stipulated penalties that was issued as a result of Mobil's failure  
27 to submit the report required under this Paragraph within the time frame set forth. Nothing in  
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1 this Paragraph shall be deemed to excuse Mobil from its investigation, notification, reporting,  
2 and corrective action obligations under this Section V (Compliance Measures) for any Flaring  
3 Incident that occurs after the Flaring Incident for which Mobil has requested an extension of time  
4 under this Paragraph 12.f.

5 g. To the extent that completion of the implementation of corrective  
6 action(s), if any, is not finalized at the time of the submission of the report required under this  
7 Paragraph, then, by no later than thirty (30) days after completion of the implementation of  
8 corrective action(s), Mobil shall submit a report identifying the corrective action(s) taken and the  
9 dates of commencement and completion of implementation.

10 13. Corrective Action. In response to any Flaring Incident, Mobil shall take, as  
11 expeditiously as practicable, such interim and/or long-term corrective actions, if any, as are  
12 consistent with good engineering practice to minimize the likelihood of a recurrence of the Root  
13 Cause and all contributing causes of that Flaring Incident.

14 a. If EPA does not notify Mobil in writing within sixty (60) days of receipt of  
15 the report(s) required by Paragraph 12 that it objects to one or more aspects of Mobil's proposed  
16 corrective action(s), if any, and schedule(s) of implementation, if any, then that (those) action(s)  
17 and schedule(s) shall be deemed approved for purposes of Mobil's compliance with Paragraph 13  
18 of this Consent Decree. Upon approval by EPA, the provisions of the corrective action plan shall  
19 become incorporated into this Consent Decree, and Mobil's failure to comply with any  
20 requirement of the EPA-approved corrective action plan shall constitute a violation of this  
21 Consent Decree subject to stipulated penalties.

22 b. EPA does not, however, by its agreement to the entry of this Consent  
23 Decree or by its failure to object to any corrective action that Mobil may take in the future,  
24 warrant or aver in any manner that any of Mobil's corrective actions in the future will result in  
25 compliance with the provisions of the Act. Notwithstanding EPA's review of any plans, reports,  
26 corrective measures, or procedures under this Section V (Compliance Measures) of this Consent  
27 Decree, Mobil shall remain solely responsible for compliance with the Act.

1 c. If EPA does object, in whole or in part, to Mobil's proposed corrective  
2 action(s) and/or its schedule(s) of implementation, or, where applicable, to the absence of such  
3 proposal(s) and/or schedule(s), EPA shall notify Mobil of that fact within sixty (60) days  
4 following receipt of the report(s) required by Paragraph 12 above. If EPA and Mobil cannot  
5 agree within sixty (60) days on the appropriate corrective action(s), if any, to be taken in response  
6 to a particular Flaring Incident, disputes may be resolved under Section XI (Dispute Resolution)  
7 of this Consent Decree.

8 d. Nothing in this Section V (Compliance Measures) shall be construed as a  
9 waiver of EPA's rights under the Act for future violations of the Act or its regulations nor to  
10 limit Mobil's right to take such corrective actions as it deems necessary and appropriate  
11 immediately following a Flaring Incident or in the period during preparation and review of any  
12 reports required under this Section.

13 14. Permitting. Not later than one hundred eighty (180) days after the Effective  
14 Date, Mobil shall submit to EPA's permitting office, the following applications:

15 a. An application for a PSD permit for the Main Flare, which shall include,  
16 among other things, the following requirements: (i) an analysis of the best available control  
17 technology for the Main Flare for SO<sub>2</sub>, CO, NO<sub>x</sub>, and VOC; and (ii) an air quality analysis. Such  
18 application shall be submitted in accordance with the requirements of the Act and 40 C.F.R.  
19 § 52.21, and shall include, among other things, terms and conditions that are at least as stringent  
20 as the terms and conditions included in Paragraphs 9.a, 10, 11, and 25(i) - (ix) of this Consent  
21 Decree, with the exception that the quarterly report required by Paragraph 25 may be changed, at  
22 the discretion of the permitting authority, to a semiannual report. Nothing in this Consent Decree  
23 is intended to nor shall be construed to operate in any way to prohibit the applicable permitting  
24 authority from issuing a PSD permit that includes requirements that differ from or are more  
25 stringent than the requirements of this Consent Decree (e.g., emissions limits on a monthly, daily,  
26 or hourly basis).

27 b. An application for a Title V Permit, which includes, among other things,  
28

terms and conditions that are at least as stringent as the terms and conditions in Paragraphs 9.a, 10, 11, and 25(i) - (ix) of this Consent Decree, with the exception that the quarterly report required by Paragraph 25 may be changed, at the discretion of the permitting authority, to a semiannual report. Such application shall be submitted in accordance with the requirements of Title V of the Act and 40 C.F.R. Part 71.

#### VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

15. In partial satisfaction of Plaintiff's claims, Mobil shall implement a SEP to support public health for the local residents in the vicinity of Aneth, Utah, on the Navajo Nation. Mobil shall spend at least \$99,849 to purchase the x-ray equipment, x-ray processor, and pulmonary function testing machine specified in Appendix D of this Consent Decree, or substantially similar equipment. Mobil shall order the equipment specified in Appendix D within ninety (90) days after the Effective Date and have it delivered to:

Nettie Prack  
Utah Navajo Health Systems, Inc.  
Montezuma Creek Community Health Center  
Highway 262 East  
Montezuma Creek, Utah 84534-0130  
Telephone: (435) 651-3291

16. Mobil is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Decree. Mobil may use contractors and/or consultants in planning and implementing the SEP, but costs incurred for contractors or consulting services do not constitute Eligible SEP Costs.

17. With regard to the SEP, Mobil certifies the truth and accuracy of each of the following:

a. That to the best of Mobil's knowledge, a reasonable and good faith estimate of the cost of the SEP is \$99,849;

b. That, as of the Effective Date, Mobil is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Mobil required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any



1 forum;

2 c. That Mobil has not received, and is not negotiating to receive, credit for  
3 the SEP in any other enforcement action; and,

4 d. That Mobil will not receive reimbursement for any portion of the SEP  
5 from any other person.

6 18. SEP Completion Report.

7 a. Within thirty (30) days after Mobil concludes that the SEP has been fully  
8 implemented in accordance with the requirements of this Consent Decree, Mobil shall submit a  
9 SEP Completion Report to EPA and DOJ at the addresses listed in Section XII (Notification) of  
10 this Consent Decree. The SEP Completion Report shall contain the following information:

- 11 (1) A detailed description of the SEP as implemented;
- 12 (2) A description of any problems encountered in completing the SEP and the  
13 solutions thereto;
- 14 (3) An itemized list of all Eligible SEP Costs and acceptable evidence of such  
15 costs;
- 16 (4) Certification that the SEP has been fully implemented pursuant to the  
17 provisions of this Consent Decree; and
- 18 (5) A description of the environmental and public health benefits anticipated  
19 to result from implementation of the SEP.

20 19. For purposes of Paragraph 18.a.(3), "acceptable evidence" includes invoices,  
21 purchase orders, or other documentation that specifically identifies and itemizes the individual  
22 costs of the goods or services for which payment is made. Canceled drafts do not constitute  
23 acceptable evidence unless such drafts specifically identify and itemize the individual costs of the  
24 goods or services for which payment is made.

25 20. Within sixty (60) days after receipt of a SEP Completion Report (unless the  
26 United States notifies Mobil that additional time is required), the United States shall notify Mobil  
27 whether or not Mobil has satisfactorily completed the SEP. If Mobil's total Eligible SEP Costs  
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are less than \$99,849, or if the SEP has not been satisfactorily completed, stipulated penalties may be assessed under Section VIII (Stipulated Penalties) of this Consent Decree. Disputes concerning the satisfactory completion of the SEP may be resolved under Section XI (Dispute Resolution) of this Consent Decree.

21. Mobil hereby agrees that any funds expended by Mobil in the performance of the SEP shall not be deductible for purposes of calculating federal and state taxes. Mobil, at the time of completion of the SEP, shall submit to the United States certification that any funds expended in the performance of the SEP pursuant to this Consent Decree have not been and will not be deducted for purposes of such taxes.

22. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 42 of this Consent Decree.

23. Any public statement, oral or written, in print, film, or other media, made by Mobil making reference to the SEP under this Consent Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. Mobil Exploration and Producing U.S. Inc., taken on behalf of the United States Environmental Protection Agency under the Clean Air Act."

## VII. COMPLIANCE REPORTING AND RECORDKEEPING

24. Calculation of the daily emissions from the Main Flare shall be based on that day's recorded volume of gas combusted in the Main Flare and the most recent recorded measurement of H<sub>2</sub>S concentration in the field gas at the Facility. The emission limits in Paragraph 9 require the use of rolling 365-day cumulative amounts. In calculating the rolling 365-day cumulative amounts for the first year after the Effective Date, the daily emissions from the Main Flare for each and every calendar day from 364 days prior to the Effective Date of this Consent Decree through the Effective Date of this Consent Decree shall be deemed to be the following: (i) 101.9 pounds per day (lbs/day) of SO<sub>2</sub>, (ii) 262.2 lbs/day of CO, (iii) 51.9 lbs/day of NO<sub>x</sub>, and (iv) 371.3 lbs/day of VOC.

1           25.     Within thirty (30) days following the end of each calendar quarter (i.e., January to  
2 March, April to June, July to September, October to December) after the Effective Date, Mobil  
3 shall submit to EPA, at the address listed in Section XII (Notification) of this Consent Decree  
4 and bearing the certification language set forth in Paragraph 42 of this Consent Decree, a  
5 quarterly report that includes: (i) a list of the rolling 365-day cumulative Main Flare Emissions  
6 for each day in that quarter; (ii) a list of each day in the quarter when the emissions limits in  
7 Paragraph 9 of this Consent Decree were exceeded and, for each such day, the limit(s) exceeded  
8 and the amount(s) of excess emissions; (iii) a list of all emissions for the quarter that Mobil  
9 claims are attributable to Malfunctions and, for each such item on the list, a detailed  
10 demonstration that all of the qualifying criteria for Malfunctions that are listed in Paragraph 9.b  
11 of this Consent Decree have been satisfied; (iv) a list of all emissions for the quarter that may be  
12 attributable to CO<sub>2</sub> Breakthroughs, Scheduled Maintenance, or unscheduled maintenance of the  
13 Facility's compressors; (v) the date(s) and time(s) during the quarter when the thermocouple or  
14 flow meter associated with the Main Flare was inoperative; (vi) the date(s) and time(s) during the  
15 quarter when Mobil failed to measure or record the H<sub>2</sub>S concentration in the field gas at the  
16 Facility or failed to continuously measure or record the volume of gas combusted in the Main  
17 Flare; (vii) a certification that during the calendar quarter Mobil operated and maintained the  
18 compressor station equipment and Main Flare in a manner consistent with good air pollution  
19 control practices for minimizing emissions, and performed all of the obligations (including, but  
20 not limited to, inspection and training obligations) contained in the O&M Plan in Appendix B;  
21 (viii) a certification that the Field Flares have not been used to circumvent the emission limits in  
22 Paragraph 9; (ix) a list of total emissions from the Field Flares and the reason for the flaring; and  
23 (x) any and all reports generated from the root cause analysis and corrective action program of  
24 Paragraphs 12 and 13 above.

25           26.     Mobil shall maintain at the Facility copies of all notices, reports, information,  
26 submissions, and records required by this Consent Decree until the termination of this Consent  
27 Decree or as required by applicable law, whichever is later. Mobil shall provide any of these  
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documents to EPA upon request.

## VIII. STIPULATED PENALTIES

### 27. Stipulated Penalties.

a. Subject to the force majeure provisions of Section X (Force Majeure), Mobil shall be liable for stipulated penalties in the amounts set forth in this Paragraph 27 to the United States for failure to comply with the terms and conditions of this Consent Decree as follows:

(1) for Mobil's failure to pay the full amount of the civil penalty set forth in Section IV (Civil Penalty): \$5,000 for each day that payment of the civil penalty is delayed beyond the date due;

(2) for Mobil's failure to comply with any requirement of Section V (Compliance Measures):

(a) for Mobil's failure to comply with any of the emission limits in Paragraph 9 of this Consent Decree (for the purpose of determining stipulated penalties for the emission limits only, days of noncompliance are cumulative from the Effective Date and need not be continuous) :

Days of Noncompliance from Effective Date to Termination of the Decree	Penalty per Day per Violation
1 <sup>st</sup> through 5 <sup>th</sup> day	\$1,000
6 <sup>th</sup> through 10 <sup>th</sup> day	\$2,500
11 <sup>th</sup> through 20 <sup>th</sup> day	\$5,000
21 <sup>st</sup> day and beyond	\$7,500

(b) for Mobil's failure to comply with any of the specific requirements in Paragraphs 11 through 13 of this Consent Decree identified in the following table:

Requirement	Penalty
Failure to implement O&M Plan requirements (§11.a.)	
Failure to maintain inspection logs or records (excluding the first full calendar quarter after the Effective Date)	\$250 per day for each day after the third day of noncompliance within each calendar quarter
Levels 2, 3, and 4 tasks	\$250 per task
Levels 5 and 6 tasks	\$500 per task
Failure to conduct training	\$500 per day
Failure to maintain spare parts	\$1,000 per day
Root Cause Analysis (§12)	\$5,000 per event
Corrective Action (§13)	\$7,500 per event

(c) for Mobil's failure to comply with any other requirement of Section V of this Consent Decree not specifically referenced in this Paragraph 27.a (2)(a) or 27.a (2)(b) above:

Period of Noncompliance	Penalty per Day per Violation
1 <sup>st</sup> through 10 <sup>th</sup> day	\$1,000
11 <sup>th</sup> through 20 <sup>th</sup> day	\$2,500
21 <sup>st</sup> day and beyond	\$5,000

(3) If Mobil's total Eligible SEP Costs are less than \$99,849 in connection with the performance of the SEP specified in Appendix D of this Consent Decree, or if the SEP has not been satisfactorily completed, Mobil shall be liable for stipulated penalties, as set forth below. If Mobil has halted or abandoned completion of the SEP, such penalties shall accrue from the date of abandonment or the date set for completion of the SEP, whichever is earlier.

(a) If the SEP has been satisfactorily completed but Mobil's total Eligible SEP Costs for the SEP are less than \$99,849, Mobil shall pay stipulated penalties at the rate of one dollar for every one dollar that Mobil's total Eligible SEP Costs for that SEP are less

1 than \$99,849.

2 (b) If a SEP has not been satisfactorily completed, Mobil shall pay  
3 stipulated penalties at the rate of \$1.50 for every one dollar that Mobil's total Eligible SEP Costs  
4 for that SEP are less than \$99,849. However, to the extent that Mobil has made good faith and  
5 timely efforts to complete the project, Mobil shall pay stipulated penalties at the rate of one  
6 dollar for every one dollar that Mobil's total Eligible SEP Costs for that SEP are less than  
7 \$99,849. If a SEP is not satisfactorily completed but Mobil's total Eligible SEP Costs for that  
8 SEP are equal to or exceed \$99,849, Mobil shall not be liable for any stipulated penalties for that  
9 SEP if Mobil has made good faith and timely efforts to complete the project and certifies with  
10 supporting documentation, no later than the date that Mobil is required to submit a SEP  
11 Completion Report for that project, that it has spent at least \$99,849. If Mobil does not provide  
12 the certification and documentation required by this subparagraph, or if the documentation  
13 provided does not support Mobil's certification, Mobil shall be deemed to be in violation of this  
14 Consent Decree and shall pay a stipulated penalty of \$7,500. Mobil shall be deemed to have  
15 made good faith and timely efforts to complete the project if Mobil complies with the specific  
16 obligations set forth in Paragraphs 15, 17 through 19, and 21 through 23.

17 (c) If Mobil fails to: (i) order the equipment within 90 days after the  
18 Effective Date as required by Paragraph 15; or (ii) timely submit a SEP Completion Report under  
19 Paragraph 18, Mobil shall pay stipulated penalties as follows:

Period of Noncompliance	Penalty per Day per Violation
1st through 14th day	\$100
15th through 30th day	\$250
31st day and beyond	\$500

24  
25 (4) for Mobil's failure to comply with any requirement of Section IX (Right of  
26 Entry): \$5,000 per day for each failure to comply; and

27 (5) for Mobil's failure to comply with any other requirement of this Consent  
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Decree not specifically referenced in this Paragraph 27.a (1) through (4) above: \$1,000 per day for each failure to comply.

b. All stipulated penalties shall automatically begin to accrue on the day after the complete performance is due or the first day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity.

Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree. Stipulated penalties shall accrue regardless of whether Plaintiff has notified Mobil of a violation of the Consent Decree.

c. Any stipulated penalty accruing pursuant to this Consent Decree shall be payable upon demand and due not later than thirty (30) calendar days from EPA's written demand.

28. Stipulated penalties shall be paid by certified or cashier's check in the amount due, shall be made payable to the "U.S. Department of Justice," referencing DOJ #90-5-2-1-2237 and USAO File Number 2003V00248, and shall be delivered by certified mail with return receipt requested to:

United States Attorney, District of Utah  
Attention: Financial Litigation Unit  
185 South State Street, Suite 400  
Salt Lake City, Utah 84111

Concurrently with making the payment, Defendant shall send notice of payment to EPA and DOJ, directed to the addresses provided in Section XII (Notification). The notice of payment shall also identify: (i) the specific provision of this Section VIII (Stipulated Penalties) related to such payment, and (ii) a description of the violation(s) of this Consent Decree for which the stipulated penalties or interest are being tendered.

29. Interest. If Mobil fails to pay the full amount of the civil penalty specified in Section IV (Civil Penalty) when due, or the full amount of any stipulated penalty specified in this Section VIII (Stipulated Penalties) within 30 days of EPA's written demand, then Mobil shall pay to the United States (in addition to the unpaid balance of each penalty) interest on the late

1 payment for each day of late payment after the initial 30-day time period. The rate of interest  
2 shall be the most recent interest rate determined pursuant to 28 U.S.C. § 1961. If Mobil disputes  
3 its obligation to pay part or all of a stipulated penalty, it shall initiate the dispute resolution  
4 procedures under Section XI (Dispute Resolution). If Mobil invokes dispute resolution, Mobil  
5 shall pay to the United States any amount that it does not dispute.

6 30. Payment of stipulated penalties for a violation of this Consent Decree shall not  
7 preclude the United States from seeking additional monetary penalties or other relief for the  
8 violations giving rise to the stipulated penalties. The United States reserves its right to pursue  
9 any or all relief for any or all violations directly, either administratively or judicially, and outside  
10 the provisions of this Consent Decree. Where a violation of this Consent Decree is also a  
11 violation of the Clean Air Act, Defendant shall be allowed a credit, for any stipulated penalties  
12 paid, against any statutory penalties imposed for such violation.

#### 13 IX. RIGHT OF ENTRY

14 31. EPA and its contractors, consultants, and agents shall have authority to enter the  
15 Facility at all reasonable times, upon presentation of credentials. This provision in no way limits  
16 or otherwise affects any right of entry held by EPA pursuant to applicable federal, state, or local  
17 laws, regulations, or permits.

#### 18 X. FORCE MAJEURE

19 32. Mobil shall satisfy the requirements of Paragraphs 9 through 26 of this Consent  
20 Decree except to the extent, and for the period of time, that such performance is prevented or  
21 delayed by events that constitute a force majeure.

22 33. For purposes of this Consent Decree, a "force majeure" is defined as an event  
23 arising from causes beyond the control of Mobil, its contractors, or any entity controlled by  
24 Mobil that prevents or delays the performance of any obligation under this Consent Decree  
25 despite Mobil's best efforts to fulfill the obligation. "Best efforts" include anticipating any  
26 potential force majeure event and addressing the effects of any such event (i) as it is occurring  
27 and (ii) after it has occurred, such that delay is minimized to the extent possible. "Force  
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1 majeure” does not include Mobil’s financial inability to perform any obligation under this  
2 Consent Decree.

3 34. In the event of a force majeure, the time for performance of the activity delayed by  
4 the force majeure shall be extended for the time period of the delay attributable to the force  
5 majeure. The time for performance of any activity dependent on the delayed activity shall be  
6 similarly extended, except to the extent that the dependent activity can be reasonably  
7 implemented in a shorter time. EPA shall determine whether the dependent activities will be  
8 delayed by the force majeure and whether the time period should be extended for performance of  
9 such activities. Mobil shall adopt all reasonable measures to avoid or minimize any delay caused  
10 by a force majeure.

11 35. When an event occurs or has occurred that may delay or prevent the performance  
12 of any obligation under this Consent Decree and that Mobil believes is a force majeure, Mobil  
13 shall notify by telephone, at (415) 947-8715, the Chief of the Air Enforcement Office, Air  
14 Division of EPA Region IX, within 72 hours of Mobil’s knowledge of such event. Telephone  
15 notification shall be followed by written notification to EPA, at the address in Section XII  
16 (Notification) of this Consent Decree, made within seven (7) working days of Mobil’s knowledge  
17 of the event. The written notification shall fully describe (i) the event that may delay or prevent  
18 performance; (ii) the reason that such event may delay or prevent performance; (iii) whether  
19 Mobil claims that such event constitutes a force majeure under this Consent Decree; (iv) the  
20 reasons any such delay is beyond the reasonable control of Mobil; (v) the anticipated duration of  
21 the delay; (vi) actions taken or to be taken to prevent or minimize the delay; (vii) a schedule for  
22 implementation of any measures to be taken to prevent or minimize the delay or the effect of the  
23 delay; and (viii) the time needed to implement any dependent activities.

24 36. Mobil’s failure to comply with the force majeure notice requirements provided in  
25 Paragraph 35 above for any delay in performance will be deemed an automatic forfeiture of its  
26 right to assert that the delay was caused by a force majeure unless such failure to provide notice  
27 was caused by a force majeure.

37. Within seven (7) working days after receiving notice from Mobil of a force majeure, EPA shall provide written notification to Mobil stating whether Mobil's request for a delay is justified. EPA's failure to respond to a request for a delay shall be deemed a denial of that request. If Mobil disagrees with EPA's force majeure determination, then Mobil may initiate the dispute resolution procedures of Section XI (Dispute Resolution) of this Consent Decree.

## XI. DISPUTE RESOLUTION

38. If Mobil disputes any determination made by EPA under this Consent Decree related to (i) a request by EPA for stipulated penalties, (ii) EPA's determination pursuant to Paragraphs 11, 13, or 20, (iii) EPA's determination related to force majeure, or (iv) the termination of the Consent Decree under Paragraph 53, Mobil shall send a written notice to EPA and DOJ outlining the nature of the dispute and requesting informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond ten (10) working days from the date when the notice was sent unless the Parties agree otherwise.

39. If the informal negotiations are unsuccessful, then the determination of EPA shall control, unless Mobil files a motion with this Court for dispute resolution. Any such motion must be filed within thirty (30) days after Mobil's receipt of a notice in writing terminating informal negotiations, and such motion must be concurrently sent to EPA and DOJ in accordance with the Section XII (Notification) of this Consent Decree. The United States shall then have thirty (30) days to respond to Mobil's motion. The Court's decision in any such dispute resolution proceeding shall be based on the administrative record. Mobil shall bear the burden of proving that (i) in disputes regarding EPA's request for stipulated penalties under Section VIII (Stipulated Penalties) of this Consent Decree or EPA's determination under Paragraphs 11 or 13, Mobil did not violate the terms and conditions of this Consent Decree; (ii) in disputes regarding EPA's determination under Paragraph 20, Mobil has satisfied all of its obligations under Section VI (Supplemental Environmental Project); (iii) in disputes regarding Section X (Force Majeure), the delay was caused by circumstances beyond the control of Mobil, its contractors, and agents, all reasonable measures were taken to minimize delay, and the duration of the delay was

1 reasonable under the circumstances; and (iv) in disputes regarding termination of this Consent  
2 Decree under Paragraph 53, Mobil has satisfied all of its obligations under this Consent Decree.  
3 The Court shall uphold EPA's determination unless Mobil proves that the determination is  
4 arbitrary and capricious, or otherwise not in accordance with law.

5 40. A timely motion by Mobil will not toll the accrual of stipulated penalties under  
6 this Consent Decree for any ongoing noncompliance with respect to the disputed matter.

## 7 XII. NOTIFICATION

8 41. Except as otherwise specifically stated, all notices and submissions from Mobil to  
9 EPA required by this Consent Decree shall be sent by certified mail, express mail, or similar  
10 overnight mail delivery with return receipt requested and addressed to:

11 Director, Air Division (AIR-1)  
12 U.S. Environmental Protection Agency, Region IX  
13 75 Hawthorne Street  
San Francisco, California 94105  
Attention: John Kim

14 All notices and submissions sent to EPA or DOJ shall refer to this Consent Decree and the  
15 Effective Date of the Consent Decree, and shall cite the case name of United States v. Mobil  
16 Exploration and Producing U.S. Inc., the civil action case number, and the DOJ Case Number  
17 90-5-2-1-2237.

18 42. All notices and submissions made pursuant to this Consent Decree shall be signed  
19 and affirmed by a responsible official of Mobil using the following certification statement:

20 I certify under penalty of law that I have examined and am familiar  
21 with the information submitted in this document and all  
22 attachments and that this document and its attachments were  
23 prepared either by me personally or under my direction or  
24 supervision in a manner designed to ensure that qualified and  
25 knowledgeable personnel properly gathered and presented the  
26 information contained therein. I further certify, based on my  
personal knowledge or on my inquiry of those individuals  
immediately responsible for obtaining the information, that the  
information is true, accurate, and complete. I am aware that there  
are significant penalties for submitting false information, including  
the possibility of fines and imprisonment for knowing and willful  
submission of a materially false statement.

27 43. As to DOJ, notices and submissions required to be sent by this Consent Decree

1 shall be submitted to:

2 Chief, Environmental Enforcement Section  
3 Attn: DOJ # 90-5-2-1-2237 (Mullaney)  
4 United States Department of Justice  
301 Howard Street, Suite 1050  
San Francisco, California 94105

5 44. As to Mobil, notices and submissions required to be sent by this Consent Decree  
6 shall be submitted to:

7 Vice President  
8 Mobil Exploration and Producing U.S. Inc.  
CORP-WGR-1260  
9 396 West Greens Road  
Houston, Texas 77067

10 45. All submissions made pursuant to this Consent Decree shall be deemed submitted  
11 on the date postmarked.

12 XIII. EFFECT OF SETTLEMENT/NON-WAIVER PROVISIONS

13 46. Neither by entering into this Consent Decree nor by taking any action in  
14 accordance with it (including paying the civil penalty required by this Consent Decree) shall  
15 Defendant be deemed to have admitted any liability for any purpose or any responsibility for, or  
16 wrongdoing relating to, the matters specifically alleged in the Complaint, or to have admitted any  
17 issues of law or fact related to or arising from the matters specifically alleged in the Complaint,  
18 except as set forth in Section I (Jurisdiction and Parties Bound) of this Consent Decree. It is the  
19 intent of the Parties to this Consent Decree that neither the terms and conditions of this Consent  
20 Decree nor any act of performance by Defendant shall be (i) admissible in any proceeding for the  
21 purpose of imputing, implying, or otherwise raising an inference of wrongdoing by Defendant, or  
22 (ii) used against Defendant as collateral estoppel in any other proceeding with any third party not  
23 a signatory to this Consent Decree.

24 47. Entry of this Consent Decree and compliance with the requirements herein  
25 resolves the civil claims of the United States against Defendant for the violations specifically  
26 alleged in the Complaint filed in this action, up to the Date of Lodging of the Consent Decree.

27 48. Except as specifically provided herein, the United States does not waive any rights  
28

1 or remedies available to it for violation by Defendant of federal or state laws or regulations. This  
2 Consent Decree shall in no way affect the United States' ability to bring future actions for any  
3 matters not specifically alleged in the Complaint filed in this action, up to the Date of Lodging of  
4 the Consent Decree. Nothing in this Consent Decree is intended to nor shall be construed to  
5 operate in any way to resolve any criminal liability of Defendant.

6 49. This Consent Decree in no way affects Defendant's responsibilities to comply  
7 with all federal, state, or local laws, regulations or permits, including, but not limited to, the  
8 reporting requirements of Section 103(a) of the Comprehensive Environmental Response,  
9 Compensation, and Liability Act, 42 U.S.C. § 9603(a), and Section 304 of the Emergency  
10 Planning and Community Right-to-Know Act, 42 U.S.C. § 11004, and the regulations  
11 promulgated thereunder. This Consent Decree is not, and shall not be construed as, a permit or a  
12 modification of a permit. Nothing in this Consent Decree shall diminish EPA's ability to request  
13 information from Defendant under applicable laws or regulations.

14 50. This Consent Decree does not limit or affect the rights of the Plaintiff or  
15 Defendant against any third parties (parties not specifically part of this Decree), nor does it limit  
16 the rights of such third parties against Defendant. This Consent Decree shall not be construed to  
17 create any rights in, or grant any cause of action to, any person not a party to this Consent Decree.

#### 18 XIV. EFFECTIVE DATE AND TERMINATION

19 51. This Consent Decree shall take effect on the date of entry by this Court.

20 52. This Consent Decree shall terminate when all of the following conditions have  
21 been met:

22 a. Mobil has complied with all of the requirements set forth in Sections V  
23 (Compliance Measures) and VI (Supplemental Environmental Project) of this Consent Decree;

24 b. Mobil has paid the civil penalty and interest as set forth in Section IV  
25 (Civil Penalty), all stipulated penalties and interest as set forth in Section VIII (Stipulated  
26 Penalties), and no penalties or other monetary obligations due under this Consent Decree are  
27 outstanding or owed to the United States;

1 c. all disputes arising under the Consent Decree have been resolved;

2 d. Mobil has received a Final Title V Permit (i) for which Mobil submitted  
3 an application in accordance with Paragraph 14 of this Consent Decree; and (ii) that includes, but  
4 is not limited to, federally-enforceable terms and conditions that are at least as stringent as all of  
5 the terms and conditions included in Paragraphs 9.a, 10, 11, and 25(i) - (ix) of this Consent  
6 Decree, with the exception that the quarterly report required by Paragraph 25 may be changed, at  
7 the discretion of the permitting authority, to a semiannual report; and

8 e. this Court approves termination of this Consent Decree.

9 53. Mobil shall initiate termination of this Consent Decree by submitting a written  
10 certification concurrently to EPA and DOJ at the addresses listed in Section XII (Notification),  
11 that (i) all conditions for termination pursuant to Paragraph 52 above (except for the condition in  
12 52.e referring to this Court's approval of termination) have been satisfied; and (ii) Mobil believes  
13 that the Consent Decree should be terminated. After receiving notice from Mobil, EPA shall  
14 provide Mobil with a written response, either stating that EPA agrees that the Consent Decree  
15 should be terminated, and submitting a motion to this Court requesting that the Consent Decree  
16 be terminated, or stating that EPA has determined that the Consent Decree should not be  
17 terminated. If EPA fails to provide written response within sixty (60) days after receiving written  
18 notice from Mobil or if EPA determines that the Consent Decree should not be terminated, Mobil  
19 may initiate dispute resolution procedures pursuant to Section XI (Dispute Resolution).

20 XV. MISCELLANEOUS

21 54. Fees. Each Party shall bear its own costs and attorneys' fees in this action.

22 55. Integration and Modifications. This Consent Decree (including its appendices)  
23 contains the entire agreement between the Parties. The notification requirements of this Consent  
24 Decree may be modified only if such modifications are made in writing and approved by all  
25 Parties. In all other respects, this Consent Decree may not be enlarged, modified, or altered  
26 unless such modifications are made in writing and approved by all Parties and this Court.

27 56. Retention of Jurisdiction. Until the termination of this Consent Decree pursuant  
28

1 to Section XIV (Effective Date and Termination), this Court shall retain jurisdiction over this  
2 action and all disputes arising hereunder (to the extent that this Consent Decree provides for  
3 resolution of disputes by this Court) for the purposes of implementing and enforcing the terms  
4 and conditions of this Consent Decree.

5 57. Public Comment. Mobil agrees and acknowledges that final approval of this  
6 Consent Decree by the United States and entry of this Consent Decree by this Court is subject to  
7 the requirements of 28 C.F.R. § 50.7, which provides for notice of the Lodging of this Consent  
8 Decree in the Federal Register, opportunity for public comment for at least thirty (30) days, and  
9 consideration by the United States of any comments prior to entry of the Consent Decree by this  
10 Court. The United States reserves the right to withdraw its consent to this Consent Decree based  
11 on comments received during the public notice period. Mobil consents to entry of this Consent  
12 Decree without further notice and shall not oppose or appeal its entry by the Court.

13 58. Final Judgment. Upon entry by this Court, this Consent Decree shall constitute a  
14 final judgment for purposes of Federal Rules of Civil Procedure 54 and 58.

15  
16 ORDER

17 IT IS SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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20 UNITED STATES DISTRICT JUDGE  
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Dated: 3/25/05

Dated:

**PAUL M. WARNER**  
United States Attorney  
**JEANNETTE SWENT**  
Assistant United States Attorney  
District of Utah  
185 South State Street, Suite 400  
Salt Lake City, Utah 84111



1 FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

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4 Dated: \_\_\_\_\_

THOMAS V. SKINNER  
Acting Assistant Administrator for Enforcement  
and Compliance Assurance  
United States Environmental Protection Agency

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10 Dated: \_\_\_\_\_

WAYNE NASTRI  
Regional Administrator  
United States Environmental Protection Agency, Region IX

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12  
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15 OF COUNSEL:

16 THOMAS P. MINTZ  
17 Assistant Regional Counsel  
18 Office of Regional Counsel  
19 United States Environmental  
20 Protection Agency, Region IX  
21 75 Hawthorne Street  
22 San Francisco, California 94105  
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1 FOR DEFENDANT MOBIL EXPLORATION & PRODUCING U.S. INC.:  
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3

4 Dated: \_\_\_\_\_

\_\_\_\_\_  
SARA N. ORTWEIN  
Vice President  
Mobil Exploration and Producing U.S., Inc.  
396 West Greens Road  
Houston, Texas 77067  
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10 Dated: \_\_\_\_\_

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LARRY W. LINDEEN  
Exxon Mobil Corporation  
800 Bell Street  
Houston, Texas 77002-7426  
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Attorney for Defendant  
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